DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002-4210
TEL: (202) 442-8167
FAX: (202) 442-9451

TIMECA ROUNDTREE-KELLY Tenant/Petitioner, v. THE DEFABIO COMPANY Housing Provider/Respondent.	Case No.: RH-TP-07-28910

FINAL ORDER

I. Introduction

Timeca Roundree-Kelly filed Tenant Petition (TP) 28,910 on March 7, 2007 for substantial reduction in services and/or facilities in Apartment 23 at 1525 19th Street, S.E., the unit she rented from The DeFabio Company on May 17, 2006. A hearing was held on July 2, 2007 at which only Ms. Roundtree-Kelly appeared. She was the sole witness. A list of exhibits admitted at the hearing is appended to this Order.

Based on credible testimony from the Tenant, in most instances corroborated by Housing Inspector Notices of Violation, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. On May 22, 2007, a Case Management Order (CMO) was sent to Petitioner Roundtree-Kelly and Housing Provider/Respondent The DeFabio Company, scheduling the hearing in this matter for July 2, 2007.

2. The United States Postal Service confirmed with receipt number 0306 3030 0001 8018 9130 that it delivered the CMO to The DeFabio Company/Alice Dennis at 2412 Minnesota Avenue, S.E., Suite 101, Washington, D.C. 20020 on May 24, 2007.

3. Timeca Roundtree-Kelly, Tenant Petitioner, appeared for the hearing on July 2, 2007; the Housing Provider did not.

4. Tenant Petitioner began renting Apartment 23 at 1525 19th Street, S.E. on May 17, 2006 from The DeFabio Company, Housing Provider, for $525 per month. She moved out on January 20, 2007 because of the conditions in the apartment Therefore, her total tenancy was for eight months.

5. At Petitioner's request, a housing inspector inspected her apartment twice, first on November 9, 2006 when he listed violations with a potential fine of $5,800, and next on January 8, 2007, when he listed violations with a potential fine of $4,500. Petitioner Exhibits (PX) 105, 106.

6. For the duration of the tenancy, eight months, Petitioner's apartment had mice, cockroaches and spiders throughout the unit. The infestation in the kitchen was the worst. Petitioner's testimony.

7. A light fixture on the ceiling was loose and had no light bulbs for the duration of her tenancy. PX 106.

8. The stove in the kitchen was not in good working order throughout the eight month tenancy. PX 105, 106.

9. In the bathroom, there was no knob on the hot water handle in the tub and there was leaking around the faucet from the onset of her tenancy until November of 2006. PX 105.

10. The bathtub drain was stopped up from May to November 2006. The problem was remedied soon after the November inspection.

11. The refrigerator in the apartment had a defective seal that permitted cockroaches to enter the refrigerator and resulted in food spoilage. The problem existed for the duration of the tenancy. PX 105, 106.

12. The hardware on the front door and door frame were defective from the outset of the tenancy until the end of November. PX 105.

13. The smoke detector did not work at any time Petitioner lived in the apartment. Although it was changed in November 2006, the new one failed to work. PX 105, 106.

14. Common areas in the apartment building had cockroaches and unsafe conditions for the duration of Petitioner's tenancy.

15. Housing Provider had clear notice of the violations by November 9, 2006 when the inspector sent the notices of violation. Evidence of earlier notice does not appear in the record. By the terms of the Notice, Respondent had fifteen days to remedy the problems.

16. Some, but not all, of the violations were remedied during that time. Housing Provider remedied the leaking faucet in the sink in the bathroom and the stopped up bathtub drain; he replaced the hardware on the front door and repaired the door frame promptly after receiving the November 2006 Notice of Violations.

17. Petitioner moved out at the end of January, 2007, living with the un-remedied persistent and substantial reductions in facilities for two months after Housing Provider's opportunity to abate the violations had passed. The violations that persisted after the November inspection were: rodents in the unit, defective stove, ineffective refrigerator seal, inoperative smoke detector, problem common areas, and loose light fixture. Petitioner's testimony and PX 106.

18. Petitioner filed a small claims action against the Housing Provider for back rent, an action in which she prevailed. The Housing Provider filed a Claim for Possession in the Landlord Tenant Branch of Superior Court, which resulted in a settlement on May 8, 2007.

19. At the beginning of her tenancy in May of 2006, Petitioner paid a security deposit of five hundred twenty-five dollars ($525).

20. Petitioner returned her keys to the DeFabio Company employee on May 9, 2007 when she was told she could return on May 20, 2007 for the security deposit refund. That deposit has not yet been returned to her. She seeks the return of that deposit in this action.

III. Conclusions of Law

This matter is governed by the Rental Housing Act of 1985, D.C. Official Code §§ 42-3501.01-3509.07 (Act), the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §§ 2-501-511, and the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2801-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399.

Although TP 28,910 was filed with the Rent Administrator, it is before the Office of Administrative Hearings (OAH) because of the OAH Establishment Act, which transferred the adjudicatory authority of several District of Columbia agencies to OAH. D.C. Official Code

§ 2-1831.01. The Rent Administrator's adjudicatory function was transferred OAH on October 1, 2006. *Id.* § 2-1831.03 (b-1)(1).

Before addressing the merits of Petitioner's claim, the propriety of proceeding in the Housing Provider's absence ought to be addressed and applicable Rules applied. "Where a procedural issue coming before this administrative court is not specifically addressed in . . . [OAH] Rules, this administrative court may rely upon the District of Columbia Superior Court Rules of Civil Procedure as persuasive authority." OAH Rule 2801.2; 1 DCMR 2801.2. In this case, the applicable Rule permits a court to proceed directly to trial "[w]hen an action is called for trial and a party against whom affirmative relief is sought fails to respond . . . ." D.C. Superior Court Rule 39-I(c).

Because the Case Management Order setting the hearing date was mailed to Housing Provider's address of record on file with the Rent Administrator, and was confirmed to be delivered by the Postal Service, Housing Provider received proper notice of the hearing date. *McCaskill v. D.C. Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990). Proceeding in Housing Provider's absence was therefore appropriate.

Next is the substance of Tenant's claims. The Petition at issue alleges that services and facilities in Tenant's unit had been substantially reduced from May 17, 2006 until she moved out on January 20, 2007. In May 2006, the applicable statute provided that a reduction in the rent ceiling was the remedy for such decreases in related services or facilities:

> If the Rent Administrator determines that the related service or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease

> ***the rent ceiling***, as applicable, to reflect proportionally the value of the change in services and facilities.

D.C. Official Code, § 42-3502.11 (2001) (emphasis added). Therefore, in this case, the remedy for a decrease in services and facilities from May 2006 until August 5, 2006 must be a reduction in the rent ceiling. The record before me lacks any information about the rent ceiling, although as it will be seen, that information is not necessary for the decision in this case.

Section 42-3502.11 was amended by D.C. law 16-145, effective August 5, 2006, which eliminated rent ceilings. The current version reads:

> If the Rent Administrator determines that the related services or related facilities supplied by a housing provider for a housing accommodation or for any rental unit in the housing accommodation are substantially increased or decreased, the Rent Administrator may increase or decrease the ***rent charged***, as applicable, to reflect proportionally the value of the change in services or facilities.

D.C. Official Code, § 42-3502.11 (emphasis added). In this case, Tenant's remedy for reductions in services and facilities from August 5, 2006 to January 20, 2007 is a reduction in the rent she was charged.

A housing provider may not be found liable for substantial reduction in related services unless the housing provider has been put on notice of the existence of the conditions. *Calomiris Inv. Corp. v. Milam*, TP 20,144 and TP 20,160 and 20,248 (Apr. 26, 1989). In this case, Housing Provider had notice of the conditions after the first inspection and Notice of Violations. Even after that inspection in November, some of the problems persisted.

The Rental Housing Commission has held consistently that the hearing examiner, now the Administrative Law Judge, is not required to assess the value of a reduction in services and facilities with "scientific precision," but may instead rely on his or her "knowledge, expertise and

discretion as long as there is substantial evidence in the record regarding the nature of the violation, duration, and substantiality." *Kemp v. Marshall Heights Cmty. Dev.*, TP 24,786, (RHC Aug. 1, 2000) at 8 (*citing Calomiris v. Misuriello*, TP 4809 (RHC Aug. 30, 1982) and *Nicholls v. Tenants of 5005, 07, 09 D St., S.E.*, TP 11,302 (RHC Sept. 6, 1985)). It is not necessary for an Administrative Law Judge to receive expert testimony or precise evidence concerning the degree to which services and facilities have been reduced in order to compensate Tenant for the value of the reduced services. "[E]vidence of the existence, duration and severity of a reduction in services and/or facilities is competent evidence upon which the [judge] can find the dollar value of a rent roll back." *George I. Borgner, Inc. v. Woodson*, TP 11,848, (RHC, June 10, 1987) at 11.

Tenant has proven with unrebutted credible testimony, corroborated by Housing Violation Notices, that services and facilities in her unit had been substantially reduced. She is entitled to a recovery for violations that persisted after notice.

Those violations were: 1) rodents in her unit for the duration of the tenancy. Two months were after notice and after a change in the law. At a value of $30 per month, she is entitled to a reduction in the rent charged for each of those two months, December 2006 and January 2007. 2) The stove in the kitchen was defective from the outset until Tenant moved out, justifying a reduction in the rent charged of $15 per month for the two months after notice. 3) The ineffective refrigerator seal that allowed food to spoil and cockroaches to enter the refrigerator justifies a reduction of $25 per month from the rent charged for two months. 4) The smoke detector was inoperative for the duration of the tenancy, putting Tenant at risk had there been a fire, justifying a $30 per month reduction in the rent charged for two months after notice. 5) Common areas were insect-ridden and unsafe, justifying a reduction of $15 from the rent

charged for two months after notice. 6) A light fixture on the ceiling was loose and had no fixtures for the duration of her tenancy, valued at $10 per month which must be deducted for the two months after Housing Provider was on notice from the rent charged for five months. The total per month reduction totals $125.

Housing Provider remedied the leaking faucet in the sink in the bathroom and the stopped up bathtub drain; he replaced the hardware on the front door and repaired the door frame promptly after receiving the November 2006 Notice of Violations. Hence, Petitioner is not entitled to recover for those violations.

The overcharges were $125 for each of two months for a total of $250. For the rent paid in December 2006, that overcharge has been held for 11 months. The interest rate set for judgments of the Superior Court of the District of Columbia on the date of the hearing is six (6) percent. At a monthly interest rate of 0.005, the interest due for the December 2006 overpayment is $6.88. The overcharge of $125 for January 2007 has been held for 10 months, with a resultant interest of $6.25. Total interest for overcharges is $13.13. When that number is added to the $250 overcharge, Petitioner is entitled to $263.13.

Finally is the question of Petitioner's security deposit. OAH jurisdiction is limited to the nonpayment of interest, which in this case totals $44.63 for the seventeen months (May 2006 to October 2007) Housing Provider has held the $525. D.C. Columbia Official Code § 42-3502.17(b). Superior Court, not OAH, has jurisdiction over the actual refund of the security deposit. See *Jordan v. Charles E. Smith Residential Realty,* TP 24,389 (RHC July 16, 1999) at 6.

The interest on the security deposit ($44.63) plus the overcharges with interest ($263.13) equals $307.76.

IV. Order

Therefore, based on the foregoing findings of fact and conclusions of law, it is this 23rd day of October, 2007:

ORDERED that Respondent DeFabio Company must pay Tenant Roundtreee-Kelly $307.76 and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Order are stated below.

October 23, 2007

_____/s/_____
Margaret A. Mangan
Administrative Law Judge